IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 188 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
PRABHUDAS KISHOREDAS TOBACO PRODUCTS(P)LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MRS SWATI SOPARKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mr. Naik, learned counsel for the Revenue and Mr. Soparkar, learned counsel for the assessee.

2. At the instance of the Revenue, the following question has been referred for our opinion;

> “Whether the Appellate Tribunal is right in law in holding that the appeal is competent before the Commissioner of Income-tax (Appeals) with regard to the Assessing Officer's order not touching the aspect of interest under section 214 & 244 (1A) ?”

3. Mr. Naik, learned counsel for the Revenue submitted that if any order in relation to interest is not made in favour of the assessee while refunding the tax extra paid, then, against the order passed by the Assessing Officer, an appeal shall not lie to the Appellate Authority. He submits that as the provisions contained in Section 214 are not subjected to appeal, any order passed by the Assessing Officer, even while he is giving effect to the order passed by the Appellate Court, cannot be subjected to an appeal.

4. On the other hand, Shri Soparkar, learned counsel for the assessee, submitted that in the matter of *Empire Industries Ltd Vs. Commissioner of Income-Tax, 193 ITR Page 295,* a Division Bench of Bombay High Court has observed that, What is done by the Income-tax Officer to give effect to the appellate orders results in an assessment and as such an appeal shall lie against the order passed by the Assessing Officer where he does not grant interest. He also referred to the Judgment of the Bombay High Court in the matter of *Caltex Oil Refining (India) Ltd. Vs. Commissioner of Income-Tax, 202 ITR 375,* and contended that the appellate provisions are to be reasonably construed and if the order passed by the appellate authority either annulles or modifies the order passed by the Assessing Officer, then the order passed by the appellate authority would stand substituted against the order passed by the Assessing Officer and any further order in compliance of the appellate order shall be appealable.

5. In the matter of *Empire Industries Ltd Vs. Commissioner of Income-Tax (supra),* the Bombay High Court has observed as under;

> *"What is done by the Income-tax Officer to give effect to the appellate orders results in an assessment under section 143 or section 144 of the Income-tax Act, 1961, as the case may be. There is no reason why, in an appropriate case, such an order cannot also be treated as an order passed under section 154 of the Act. An appeal would be competent from such an order under section 246(1)(f)"*

Similarly, in the matter of Caltex Oil Refining (India) Ltd. vs. Commissioner of Income-Tax, the Bombay High Court has observed as under;

> *"Clause (c) of section 246 is in two parts. The first part deals with an order against an assessee where the assessee denied his liability to be assessed under the Act. The second part deals with any order of assessment under sub-section (3) of section 143 or section 144. In the second case, however, there is a further restriction that an appeal against such order lies only where the assessee objects (i) to the amount of income assessed, or (ii) to the*

amount of tax determined, or (iii) to the amount of loss computed, or (iv) to the status under which he is assessed. The first part of this clause deals with denial of liability. Interest under section 214 does not fall under the heading "liability" of the assessee. It is in effect the liability of the Government to pay interest to the assessee on the excess amount of advance tax paid by him. An assessment under section 143(3) would include not only the determination of the amount of tax calculated at the rate prescribed under the Finance Act but also interest or any other thing which has the effect of reducing or enhancing the total amount payable by the assessee under such an assessment. There is a distinction between interest under the provisions of the Act which is charged from the assessee and interest under section 214 which is payable by the Government. This has been made clear by stating in sub-section (1A) while dealing with excess of refund given to the assessee that such interest "shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly." This deeming clause incorporated in section 214 has to be given some meaning. Interest has been deemed to be tax "and the provisions of

this Act" have been made applicable meaning thereby provisions including section 246. The well known principle of interpretation is that no part of the statute should be construed in a way to make it redundant. Section 229 makes the provisions relating to recovery of tax applicable to recovery of interest and only for that limited purpose equates interest with tax but so far as sub-section (1A) is concerned, it has made all the provisions of the Act applicable to interest under section 214 as they apply to the tax payable by the assessee. This legal fiction, therefore, has to be carried to its logical conclusion. In construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operation (see pp. 383H, 384A, C, D, 385B, C, 386B, C, F—H).

Hence interest under section 214 is a part of the assessment and is deemed to be tax for the purposes of this Act including clause (c) of section 246. The appeal by an assessee aggrieved by an order of assessment made under section 143(3) or section 144, either originally or in consequence of an appellate order with a view to giving effect to the directions

contained therein, objecting to the amount of interest payable by the Government under section 214 to the assessee as determined by the Income-tax Officer is, therefore, maintainable under clause (c) of section 246 (see pp. 387H, 388A).”

6. In the matter of Caltex Oil Refining (India) Ltd., (supra), the Bombay High Court has considered very many provision of the Income Tax Act and has given cogent reasons for holding that appeal against an order refusing to grant interest would be maintainable because interest under Section 214 is part of the assessment and is deemed to be tax for the purposes of the Act. Respectfully agreeing with the Judgment of the Bombay High Court, we hold that the Appeal before the Appellate Authority was maintainable. The Reference is answered against the interest of the Revenue. The Reference stands disposed of accordingly. No costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.